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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,232	02/28/2002	Leslie Dort	A889577US	7803

7590

05/09/2003

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CANADA

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,232

Applicant(s)

Leslie Doot

Examiner

Michael Brown

Group Art Unit

3764

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-11 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Forney.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forney in view of Alvarez '734.

Forney discloses in figures 1-5 a device for retaining a tongue, substantially as claimed.

However, Forney does not disclose the device being made of either of the materials recited in

claims 4 and 12. Alvarez teaches in figures 1- 18D a device for retaining a tongue comprising a

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flange 36, an aperture (the opening between 23 and 24) and the device is made of polyethylene (col. 5, lines 50-54). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the polyethylene material as taught by Alvarez could be substituted for the material as disclosed by Forney because polyethylene is a durable material that will withstand the user biting on the device or inserting his tongue into the protrusion over a long period of time.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fitton and Kulick, each discloses a tongue retention device. Although each of these references discloses pertinent prior art, neither was used to reject any claims, in the first office action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
May 3, 2003

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal flourish extending to the right.

Michael A. Brown
Primary Examiner